SUPREME COURT, U.S.
JUN 15 1970
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, [redacted] 1970

No. [redacted] 264

HELEN JOAN BERKAW, et al.,
Petitioners,

v.

MAYFLOWER CONGREGATIONAL CHURCH,
a Michigan corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN, DIVISION I

ALFRED E. LINDBLOOM,
Counsel for Petitioners,
1100 Ford Building,
Detroit, Michigan 48226

June 10, 1970

Interstate Brief & Record Co., 1036 Beaubien St., Detroit, Michigan 48226
WO. 2-8745—WO. 2-8732

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MAYFLOWER CONGREGATIONAL CHURCH,
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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN, DIVISION I

The Petitioners, Helen Joan Berkaw, Grace Pfaff, Frank C. Smith and Roy L. Stephens, Jr., respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Court of Appeals of Michigan, Division 1, entered in the above entitled action on June 26, 1969.

OPINIONS BELOW

The opinion of the Wayne County Circuit Court, dictated on the record May 1, 1968, is not reported and is printed in the Appendix (11).* The judgment of the Wayne County Circuit Court, dated June 18, 1968, containing certain findings of fact, is not reported and is printed in the Appendix (13). The opinion of the Court of Appeals of Michigan, Division 1, is reported in 18 Mich. App. 245, 170 N.W.2d 905 (1969), and is printed in the Appendix (16).

JURISDICTION

The judgment of the Court of Appeals of Michigan, Division 1, was entered on June 26, 1969, affirming the judgment dismissing the above entitled cause, dated June 18, 1968. The Court of Appeals denied a timely motion for rehearing on August 4, 1969. Thereafter, on March 26, 1970 the Supreme Court of Michigan denied an application for leave to appeal. 383 Mich. 774 (1970) (Appendix 26). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3).

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*References in parentheses refer to pages of the Appendix, *infra*. References preceded by R refer to pages of certified record on appeal which follow the figure 611-604.

QUESTION PRESENTED

The founders of Respondent chose to incorporate it under a statute which provides that the property shall be used for Congregational religious purposes only, and Respondent became a part of the United Church of Christ, whose Constitution and By-Laws are in writing and the standards of congregationalism are admitted: Does a civil court have jurisdiction to determine the ownership of the property?

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Michigan C.L. 1948, Section 458.307, contains the following:

> "* * * Provided, however, That all property of said corporation whether real, personal or mixed or whether held in fee or in trust and the income therefrom and the proceeds thereof when sold shall, subject to the terms of any trust or trusts relating thereto or to any part thereof, be held and used by said corporation for the benefit of said church as a Congregational religious organization, and for no other purpose whatsoever, * * *"

Said Section 458.307 and Section 458.301 are printed in the Appendix (27; 28).

STATEMENT OF THE CASE

The bill of complaint alleges and the answer admits that Respondent was organized in 1930 under Act 53 of the Michigan Public Acts of 1901, C.L. 1948 Section 458.301, et seq. entitled "An Act for the Organization of Corporate Congregational Churches" (R3, 363). The bill alleges that the local congregational church is completely autonomous and that it determines, among other things, (a) what shall be considered to be sacraments, and how observed; (b) the call and the dismissal of its ministers in such manner and for such cause as it may please; (c) the ordination as a minister the person it may desire to call, if not already ordained, or if not ordained in the manner and effect acceptable to it; and (d) that it is free of any imposition or request from any outside source in respect to any matter (R4). The above is admitted by the answer (R363).

On the 30th day of April, 1961, by a vote of 253 to 204, Respondent approved the Constitution of the United Church of Christ and voted to become a part of it (R5). The bill further alleges that the Constitution of the United Church of Christ abridges and impairs the autonomy of the local church and particularly in reference to items a, b, c and d, *supra,* (R6) and that to make Respondent a part of United Church and subject to its Constitution would divert Respondent's property to another denomination (R7, 8). The bill, prays that the title to the property be quieted in those members of the church who remain congregational (R9).

Respondent included in its answer a motion for accelerated judgment on the ground that the Court lacks jurisdiction over the subject matter set forth in the bill of complaint by reason of the First Amendment to the United States Constitution (R366).

Petitioners moved for a summary judgment, claiming that the pleadings admit the congregational polity in respect to items a, b, c and d, *supra*, and that the Constitution and By-Laws of the United Church of Christ which are in writing provide for a different polity in respect to these four items (R382). The motion was supported by affidavits, the Articles of Association of Respondent, and of the Michigan Conference of the United Church of Christ (R384-395, 456-458, 462-464).

Respondent filed a motion for summary judgment (R-439) and a motion for accelerated judgment on the ground that the Court lacks jurisdiction over the subject matter set forth in the complaint by reason of the First and Fourteenth Amendments to the United States Constitution (R441). These motions were briefed, and orally argued before the Wayne County Circuit Court. At the oral argument, in part, Petitioners relied upon Act 53 of the Public Acts of 1901 and claimed, "So, our issue here really is this, is the United Church of Christ congregational? If it is not, then when the Mayflower voted to become a part of it, it departed from congregationalism because the organization that was joined is not congregational." (Transcript of Argument p. 19.) The trial Court denied Petitioners' motion for summary judgment and granted Respondent's motions for summary judgment and for accelerated judgment (11, 12, 13, 15).

Petitioners appealed to the Court of Appeals of Michigan. After the case was briefed, but before argument, *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969), was decided. Respondent then filed a supplemental brief and Petitioners replied to it. These briefs and the oral arguments discussed almost exclusively the jurisdictional question. On June 26,

1969 the Court of Appeals affirmed the judgment of the Wayne County Circuit Court solely on the jurisdictional issue (21).

Petitioners filed a motion for rehearing, which was denied by the Court of Appeals on August 4, 1969 (25). The judgment of the Michigan Court of Appeals is final unless the Supreme Court grants an application for leave to appeal. Petitioners filed such an application for leave to appeal, which was denied by the Supreme Court of Michigan on March 26, 1970 (26).

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE DECISIONS OF THE UNITED STATES SUPREME COURT AS TO THE JURISDICTION OF CIVIL COURTS IN CHURCH PROPERTY DISPUTES

The Michigan Court of Appeals decided this case before the Per Curiam opinion in *The Maryland and Virginia Eldership of Churches of God, et al v. The Church of God at Sharpsburg, Inc.*, 90 S.Ct. 499 (1970). The decision here is contrary to the teachings of that case. The statute here involved, Michigan C.L. 1948 Section 458.301, et seq., is constitutional. There is no requirement that a church incorporate under the act. The act merely provides that if a church is organized under the act the property shall be used for congregational religious purposes only. Michigan C.L. 1948, Chapter 458, contains statutes providing for the incorporation of Methodist Episcopal Churches, Wesleyan Methodist Churches, Methodist Protestant Churches, Free Methodist Churches, Baptist Churches, Presbyterian Churches, Protestant Episcopal Churches, Congregational Churches, Reformed Protestant Dutch

Churches, Christian Reformed Churches, Evangelical Churches, United Missionary Churches, and concerning conveyances to Roman Catholic archbishops. However, those desiring to organize a church are not required to incorporate under any of these statutes. They may incorporate a non-profit or ecclesiastical corporation, or not incorporate at all. This statute, therefore, does not interfere with or "establish" the doctrine or disciplines of any religious body. See *Maryland and Virginia Eldership v. Church of God*, 254 Md. 162, 173; 254 A.2d 162, 169 (1969).

A civil court has jurisdiction to enforce the provisions of the statute here involved because the determination of whether United Church of Christ is congregational can be made without the resolution of doctrinal questions and without extensive inquiry into religious polity. The polity or fundamentals of congregationalism is admitted. The judgment of the trial Court found that one of the undisputed facts is:

> "Said Church (Respondent), as are other such churches, is autonomous, independent and free of external control of all matters, whether spiritual or temporal and is governed by the vote of its membership." (R450)

The Constitution and By-Laws of United Church of Christ are in writing (R477-508). From them, a civil court can identify whether the United Church of Christ is congregational. Such identification can be made without resolution of doctrinal questions and without inquiry into religious doctrine and is permitted under *Maryland*.

The statute here created a statutory trust that the property shall be used for congregational religious purposes only, thus the property is in the first class mentioned in *Watson v. Jones*, 80 U.S. (13 Wall) 679, 722 (1872). This

statutory trust may be enforced by a civil court because a civil court is merely required to identify whether United Church of Christ is congregational from its written constitution and by-laws.

Even if it is necessary to determine whether Respondent departed from congregationalism when it became a part of the United Church of Christ, this can be done without extensive inquiry into religious polity or the resolution of any doctrinal questions because it is merely necessary to compare the admitted standards of congregationalism with the written constitution and by-laws of the United Church of Christ. Such an inquiry qualifies as a "neutral principle of law" within the meaning of *Maryland*.

There is attached to Petitioners' Motion for summary judgment the Articles of Association of the Michigan Conference of the United Church of Christ, which provides that the members of the Conference Corporation are the various churches and ministers of the United Church of Christ and that such churches shall worship and labor together according to the faith and usages of the United Church of Christ (R462), Respondent did not file any answering affidavits and under Michigan practice, the facts stated in Petitioners' affidavits are considered as true. Reverend Burton, in his affidavit, a part of Petitioners' motion for summary judgment, states that it is a departure from congregationalism for a congregational church to become a part of any other church or to be governed in any way by the constitution of any other body (R393). Hence, on the admitted facts, Respondent, when it became a part of United Church of Christ, is no longer completely congregational.

The Michigan Court had jurisdiction to determine whether the provisions of the statute in question could be

enforced without violating the United States Constitution, Amendment 1, and its decision is not only erroneous, but is contrary to *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 89 S.Ct. 601 (1969) and *Maryland and Virginia Eldership of Churches of God, et al v. The Church of God at Sharpsburg, Inc.*, 90 S.Ct. 499 (1970).

2. THE DECISION BELOW RAISES SIGNIFICANT AND RECURRING PROBLEMS CONCERNING THE JURISDICTION OF CIVIL COURTS IN CHURCH PROPERTY DISPUTES INVOLVING STATE STATUTES

There are several, perhaps even ninety, Congregational Churches incorporated under the statute Michigan C.L. 1948, Section 458.301, et seq. Many of those congregational churches have joined the United Church of Christ and it is important to those churches, their members, and to the United Church of Christ to know whether the Michigan civil court has jurisdiction to determine the ownership of the property of the churches. United Church of Christ is one of the prime movers of the Consultation on Church Union and if another church or denomination results from that Union the question of jurisdiction of the civil courts to enforce this statute is doubly important.

There is now pending in the Supreme Court of the State of Connecticut a case entitled *Joseph A. Copp, et al. v. Horace L. Baxnum, et al*, No. 6647, in the October Term, 1969. That case in part involves a Connecticut statute of charitable uses. While that statute is dissimilar from the statute here involved, one of the issues in that case is whether the Connecticut court has jurisdiction to determine whether that statute involves a neutral principle of law within *Hull* and *Maryland*.

Certain other states have statutes which are not identical with the Michigan statute, but do in some cases attempt to limit the use of the church property to the use stated in the particular statute or in the articles of incorporation and it is of great importance to those churches and the members thereof to know whether a civil court has jurisdiction to determine whether those statutes are a neutral principle of law and whether a civil court has jurisdiction to give effect to the statute if in so doing the court is not required to make extensive inquiry into religious doctrine.

It is of great importance to all churches and to their many members to learn whether civil courts are barred from any jurisdiction where a church is involved or whether a civil court can and should inquire whether an applicable statute can be enforced without violating the United States Constitution, Amendment I. It is important that some guide lines should be given by this Court on this important question.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals of Michigan, Division 1.

Respectfully submitted,

ALFRED E. LINDBLOOM
Counsel for Petitioners
1100 Ford Building
Detroit, Michigan 48226

June 10, 1970

APPENDIX A

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne, In Chancery.

Helen Joan Berkaw, et al., Plaintiffs, v. Mayflower Congregational Church, a Michigan Corporation, Defendant.	No. 611-604

OPINION OF WAYNE COUNTY CIRCUIT COURT

(OPINION DICTATED BY THE COURT May 1st, 1968)

The Court: The Court feels that it has been benefited by the argument of counsel, together with briefs, together with the official records in this matter, together with the other cases that have been cited to it, and prior to the arguments today, a chance to review those cases.

It would seem to the Court that the document to be construed, that is the constitution, provides the autonomy that distinguishes Congregationalism, that there is no requirement for the members to do any of the things, but rather that the arguments of the Defendants are well substantiated in that these provisions are in the nature of recommendations. Therefore, the Motion for Summary Judgment will be denied.

Mr. Wood: Your Honor, will our Motion for Summary Judgment be granted then? It's on the same point.

The Court: It is on the same point, and the opposite of course, has to be true, and therefore, we will grant your Motion for Summary Judgment.

Mr. Wood: Could we also dispose of the jurisdictional question, I don't think you want to hear the argument at this stage.

The Court: Well, I would also like to dispose of the matter of the Accelerated Judgment. I would like to get to that and certainly you would prevail in that instance. I don't think we would want to go into the doctrinal arguments at all.

Mr. Lindbloom: I'm sorry. I didn't hear that.

The Court: We don't want to get into the doctrinal argument, and this is the jurisdictional question you are speaking about, is it not?

Mr. Wood: Yes, it is.

The Court. Therefore, we'll grant the Motion for Accelerated Judgment also.

APPENDIX B

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne, In Chancery

Helen Joan Berkaw, Grace Pfaff, Frank C. Smith, Roy L. Stephens, Jr., Plaintiffs, v. Mayflower Congregational Church, a Michigan corporation, Defendant.	No. 611,604

SUMMARY JUDGMENT AND ACCELERATED JUDGMENT FOR DEFENDANT AND ORDER DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

At a session of said Court, held in the City-County Building in the City of Detroit, Wayne County, Michigan on the 18th day of June, 1968.

Present: Honorable John B. Swainson, Circuit Judge.

This matter having come on to be heard upon the motion of defendant, Mayflower Congregational Church, for summary judgment pursuant to Michigan General Court Rule 117 and for accelerated judgment pursuant to Rule 116, and also upon the motion of plaintiffs for summary judgment pursuant to Rule 117; and the respective counsel having made oral arguments in open court, and the Court having received and examined the affidavits of the plaintiffs, memoranda of law submitted by defendant and

plaintiffs and the records and files herein, including the Constitution and By-laws of the United Church of Christ, the express provisions of which are not in dispute, and having examined all allegations set forth in the plaintiffs' bill of complaint and defendant's answer and the Court being fully advised in the premises and due deliberation having been had thereon:

1. The Court finds that the following facts are undisputed:

(a) Mayflower Congregational Church was organized for the purpose of worshiping and laboring together as a Church according to the faith and usages of the churches commonly called Congregational.

(b) Said Church, as are other such churches, is autonomous, independent and free of external control in all matters, whether spiritual or temporal and is governed by the vote of its membership.

(c) On April 30, 1961, by a vote of 253 to 204 the members of said church duly adopted a resolution approving the Constitution of the United Church of Christ and to become a part of the United Church of Christ.

(d) The existence and contents of the Constitution and By-laws of the United Church of Christ.

2. The Court finds as a matter of law that there is no genuine issue as to any material fact and that the complaint fails to state a claim upon which relief can be granted inasmuch as Plaintiffs' claim is predicated solely upon the allegation that the Constitution and By-laws of the United Church of Christ abridge the autonomy of churches which become a part of the United Church of Christ and the Court further finds as a matter of law:

(a) The provisions of the Constitution and By-laws of the United Church of Christ do not abridge the autonomy of the defendant church.

(b) Such provisions are neither mandatory nor regulatory with respect to defendant church but are recommended procedures and describe the free and voluntary relationships of the defendant church with other local churches, Associations and Conferences and the General Synod of the United Church of Christ.

3. The Court also finds as a matter of law that this Court lacks jurisdiction of the subject matter set forth in the complaint by reason of the First and Fourteenth Amendments of the United States Constitution.

It Is Therefore Ordered, Adjudged and Decreed, that the motions of defendant, Mayflower Congregational Church for Summary Judgment and for Accelerated Judgment be and they hereby are granted and judgment is hereby entered in favor of defendant dismissing said cause and plaintiffs' Bill of Complaint.

It Is Further Ordered, Adjudged and Decreed, that plaintiffs' Motion for Summary Judgment be and it hereby is denied.

John B. Swainson,
Circuit Judge.

Approved as to Form:

Beaumont, Smith & Harris
By: Alfred E. Lindbloom
Attorneys for Plaintiffs

APPENDIX C

State of Michigan
Court of Appeals

Division 1

Helen Joan Berkaw, Grace Pfaff, Frank C. Smith, Roy L. Stephens, Jr., Plaintiffs-Appellants,
v.
Mayflower Congregational Church, a Michigan corporation, Defendant-Appellee.

Docket No. 5892

OPINION OF COURT OF APPEALS OF MICHIGAN

(June 26, 1969)

Before: Lesinski, C.J., Brennan and Fitzgerald, JJ.
Lesinski, C.J.

This is an appeal from summary and accelerated judgments granted to defendant, Mayflower Congregational Church, by the Wayne County Circuit Court.

The action arose following a merger of the Evangelical and Reformed Churches and the Congregational Christian Churches into a new church, the United Church of Chirst.* Pursuant to that merger, defendant local church, Mayflower Congregational Church, by a majority (253 to 204) voted to join the United Church of Christ.

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* Additional aspects of this litigation are presented in two prior appeals. *Berkaw v. Mayflower Congregational Church* (1965), 1 Mich App 252, reversed (1966), 378 Mich 239. Regarding further legal history of the merger, see, also, *Cadman Memorial Congregational Society of Burlington, Iowa v. Evangelical and Reformed Church* (CA 2, 1962), 305 F2d 724.

Plaintiffs constitute the "faithful minority" of the Mayflower Congregational Church. They filed suit to quiet title to the realty and personalty of defendant church in themselves, on the grounds that the United Church of Christ did not conform *with the existing congregational doctrines of the Mayflower Church.* In bringing this action, plaintiffs relied upon the Michigan doctrine that the membership of a congregation does not have the right to effect by majority vote, a change in religious practice as against those who faithfully adhere to the characteristic doctrine of the church and thereby deprive the minority of the use of church property. *Davis v. Scher* (1959), 356 Mich 291.

Defendant church, representing the majority of the congregation, answered that defendant by becoming part of the United Church of Christ did not effect a departure from congregational practice. Furthermore, defendant asserted that this Court lacks jurisdiction to decide the ecclesiastical issues pesented by reason of the First and Fourteenth Amendments to the United States Constitution.

The trial court granted defendant's motion for accelerated judgment, finding as a matter of law that the court lacked jurisdiction of the subject matter by reason of the First and Fourteenth Amendments to the United States Constitution. Moreover, the court granted defendant's motion for summary judgment, finding both no genuine issue of material fact and failure of the complaint to state a cause of action. Regarding the summary judgment, the court found as a matter of law that the provisions of the Constitution and by-laws of the United Church of Christ do not abridge the autonomy of defendant church and are neither mandatory or regulatory, but

merely recommended procedures describing a voluntary relationship.

Plaintiffs appeal the decision of the trial court, contending *inter alia* that the trial court has jurisdiction to quiet title in the faithful minority *where the church departs from congregationalism.*

In *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969), — US — (— S. Ct. —, 21 Led2d 658), 37 Law Week 4107, a case decided on January 27, 1969, after the briefs in this case were submitted but discussed in the defendant's supplemental brief and in plaintiff's supplemental reply brief, the United States Supreme Court held that the civil courts have "*no* role in determining ecclesiastical questions in the process of resolving property disputes". (Emphasis supplied.)

As stated by the Supreme Court, the *Mary Elizabeth Case* involved:

> "A church property dispute which arose when two local churches withdrew from a hierarchial general church organization. Under Georgia law the right to the property previously used by the local churches was made to turn on a civil court jury decision as to whether the general church abandoned or departed from the tenets of faith and practice it held at the time the local churches affiliated with it. The question presented is whether the restraints of the First Amendment, as applied to the States through the Fourteenth Amendment, permit a civil court to award church property on the basis of the interpretation and significance the civil court assigns to aspects of church doctrine."

The Supreme Court reversed the Georgia jury verdict granting church property to the local churches based upon

a finding of fundamental abandonment of the original doctrines by the general church. It reasoned that:

> "The First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of *controversies over religious doctrine and practice*. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, *Abington v. Schempp*, 374 U.S. 203 (1963); the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (Emphasis supplied.)

We consider the *Mary Elizabeth* decision to be controlling in the instant case. The fundamental inquiry in this

case was whether the majority, by voting to become a part of the United Church of Christ, departed from congregational doctrine. Clearly, therefore, in order to grant the relief plaintiffs request, ecclesiastical issues regarding departure from doctrine must be resolved by civil courts. Such a determination was expressly prohibited by *Mary Elizabeth*:

> "The Georgia courts have violated the command of the First Amendment. The departure-from-doctrine element of the implied trust theory which they applied requires the civil judiciary to determine whether actions of the general church constitute such a 'substantial departure' from the tenets of faith and practice existing at the time of the local churches' affiliation that the trust in favor of the general church must be declared to have terminated. This determination has two parts. The civil court must first decide whether the challenged actions of the general church depart substantially from prior doctrine. In reaching such a decision, the court must of necessity make its own interpretation of the meaning of church doctrines. If the court should decide that a substantial departure has occurred, it must then go on to determine whether the issue on which the general church has departed holds a place of such importance in the traditional theology as to require that the trust be terminated. A civil court can make this determination only after assessing the relative significance to the religion of the tenets from which departure was found. Thus, the departure-from-doctrine element of the Georgia implied trust theory requires the civil court to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role."

In the instant case, plaintiffs alleged a departure and defendant specifically counters that no changes in doctrine occurred. Thus, the case is unlike *Davis v. Scher, supra,* where in a property dispute *both parties agreed* that a change in doctrine occurred, and the court could find that no ecclesiastical questions were in dispute. Where there is no agreement than a departure occurred, the ecclesiastical conflict destroys civil court jurisdiction to resolve the property dispute.

Although the *Mary Elizabeth Case* involved churches utilizing a hierarchial form of organization, we see no basis in that case for a distinction making *Mary Elizabeth* inapplicable to a congregational form of organization. The essence of the Supreme Court decision is the prohibition of civil court determination of ecclesiastical questions. Thus, in the absence of fraud, collusion, or arbitrariness, the proper ecclesiastical body, and not the civil court, must decide church doctrine. In the *Mary Elizabeth Case*, since Presbyterian churches were involved, the decision of Presbyterian church tribunals as to church doctrine was controlling. In the instant case, the Mayflower Congregational Church is autonomous with all ecclesiastical power vested in its assembled brotherhood. As such, the decision of a majority of the members is controlling in determination of ecclesiastical questions. Under the First and Fourteenth Amendments to the United States Constitution, this leaves civil courts no role in disputes regarding substantive ecclesiastical matters.

Due to our resolution of the jurisdictional issue, consideration of the remaining contentions of plaintiff on appeal is unnecessary.

Affirmed. Costs to Appellee.

APPENDIX D

State of Michigan
Court of Appeals

Division 1

Helen Joan Berkaw, Grace Pfaff, Frank C. Smith, Roy L. Stephens, Jr., Plaintiffs-Appellants, v. Mayflower Congregational Church, a Michigan corporation, Defendant-Appellee.	Docket No. 5892

CONCURRING OPINION OF COURT OF APPEALS OF MICHIGAN

(June 26, 1969)

Before: Lesinski, C.J., Brennan and Fitzgerald, JJ.

Fitzgerald, J., concurring specially.

While it has been written that, "It is a foolish thing to make a long prologue and to be short in the story itself,"[1] I cannot refrain from briefly observing that strict application of the *Mary Elizabeth Case*[2] catapults us to the ultimate irony that churches have been divorced from any statutory protections, from fostering influences furnished

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[1] The Apocrypha, 2 Maccabees II, 32.

[2] *Presbyterian Church in the U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church* (1969) (89 S Ct 601, 21 L ed 2d 658).

by state legislatures, and from all the benefits of law save perhaps those "marginal" few cited in *Gonzales*.[3]

I do not believe *Mary Elizabeth* should be sanctified this far, and I specially adopt the concurrence of Mr. Justice Harlan in that case.

The instant case, however, is amenable to the imminent prohibitions of *Mary Elizabeth* since the core decision here revolves around the question: What is congregationalism? No around-the-mulberry-bush reasoning can remove us from the fact that the question is ecclesiastical or, perforce, one of faith and creed, and thus precluded to us.

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[3] *Gonzales v. Roman Catholic Archbishop of Manila* (1929), 280 US 1 (50 S Ct 5, 74 L ed 131).

APPENDIX E

JUDGMENT OF COURT OF APPEALS OF MICHIGAN

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Dteroit, on the 26th day of June in the year of our Lord one thousand nine hundred and sixty-nine.

Present: the Honorable T. John Lesinski, Presiding Judge, John W. Fitzgerald, Vincent J. Brennan, Judges.

This cause having been brought to this Court by appeal from Wayne County Circuit Court, and having been argued by counsel, and due deliberation had thereon, it is now ordered by the Court, that the judgment of the Wayne County Circuit Court be and the same is hereby affirmed. Costs to appellee.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 26th day of August in the year of our Lord one thousand nine hundred and sixty-nine.

Ronald L. Dzierbicki,
Clerk.

(Seal)

APPENDIX F

ORDER OF COURT OF APPEALS DENYING APPLICATION FOR REHEARING

At a session of the Court of Appeals of the State of Michigan, held at the Court of Appeals in the City of Lansing, on the 4th day of August in the year of our Lord one thousand nine hundred and sixty-nine.

Present: the Honorable T. John Lesinski, Presiding Judge; John W. Fitzgerald, Vincent J. Brennan, Judges.

In this cause a motion for rehearing is filed by appellants and an answer in opposition thereto having been filed by appellee, and due consideration thereof having been had by the Court,

It Is Ordered that the motion for rehearing be, and the same is hereby Denied.

State of Michigan—ss.

I, Ronald L. Dzierbicki, Clerk of the Court of Appeals of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court of Appeals at Lansing, this 5th day of August in the year of our Lord one thousand nine hundred and sixty-nine.

/s/ Ronald L. Dzierbicki,
Clerk.

(Seal)

APPENDIX G

ORDER OF SUPREME COURT OF MICHIGAN DENYING APPLICATION FOR LEAVE TO APPEAL

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 26th day of March in the year of our Lord one thousand nine hundred and seventy.

Present: the Honorable Thomas E. Brennan, Chief Justice; John R. Dethmers, Harry F. Kelly, Eugene F. Black, Thomas M. Kavanagh, Paul L. Adams, Thomas G. Kavanagh, Associate Justices.

On order of the Court, the application for leave to appeal is considered, and the same is hereby Denied, as plaintiffs and appellants have failed to persuade the Court that they have a meritorious basis for appeal or that the decision of the Court of Appeals was clearly erroneous.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 30th day of March in the year of our Lord one thousand nine hundred and seventy.

/s/ Donald F. Winters,
Clerk.

(Seal)

APPENDIX H

MICH. C.L. 1948, SECTION 458.301

458.301 Congregational church, incorporators; articles, execution, contents

Sec. 1. It shall be lawful for any number of persons of full age, not less than 5, who may desire to form themselves into a Congregational church, to adopt, execute and acknowledge before any person authorized to take acknowledgment of deeds, articles of association, in writing, whereby they shall agree to organize a church, according to the faith and usages of the churches commonly called Congregational, under the name and style set forth in said articles, which shall contain the following items:

First. The name of said church;

Second. The township, vilage or city, and the county in which said church shall be located;

Third. An agreement to worship and labor together as a church according to the faith and usages of the churches commonly called Congregational.

APPENDIX I

MICH. C.L. 1948, SECTION 458.307

458.307 Powers of corporation; offerings and funds for certain purposes

Sec. 7. Such corporation may have a seal and alter the same at will. It may, in its corporate name, sue and be sued in all courts of competent jurisdiction. Subject to the provisions of this act it shall have power to choose, call and settle a pastor and fix his salary; to elect trustees, treasurer and clerk and such other officers as may be provided for in its articles of association; to direct and control their actions; to acquire, hold, manage, control, sell and convey property both real and personal; to hold and recover all debts, damages, rights, privileges and all property, real, personal or mixed of whatsoever nature they or it may be and in whosoever hands held, belonging or appertaining to said church or to the religious organization out of which it is incorporated or reincorporated the same as if the right and title to said property had originally been vested in said corporation. It may hold so much real estate as may be needed for the purpose of church building, parsonage and cemetery purposes and of any so-called institutional activities; it may also hold for a period not exceeding 10 years, such real estate as may be conveyed or devised to it even though the same be not needed for the purposes above mentioned or be actually occupied by it in the exercise of its franchises: Provided, however, That all property of said corporation whether real, personal or mixed or whether held in fee or in trust and the income therefrom and the proceeds thereof when sold shall, subject to the terms of any trust or trusts relating thereto or to any part thereof,

be held and used by said corporation for the benefit of said church as a Congregational religious organization, and for no other purpose whatsoever, except as provided in section 8 of this act.[1] Said corporation may and shall hold in perpetuity as a permanent fund all property given, bequeathed or devised to it or acquired by it for the purpose of an endowment, the income from which fund, subject to the terms of any specific trust or trusts relating thereto, or to any particular part thereof, may be used for any lawful purposes of said church or corporation: Provided, That as to real estate, said property, when so required by law, may be sold and the proceeds from such sale covered into said fund: And Provided further, That said corporation, in the lawful administration of said fund, may sell any property therein and re-invest the proceeds of such sale in such securities and other property as shall be lawful investments for savings banks and trustees in this state, said property and securities when acquired, to become a part of the principal of said fund: And Provided further, That none of the offerings of said church received or collected for missionary or benevolent purposes shall be used for the current running expenses of said church or corporation; nor shall any fund or funds, money or other property received, set aside, accumulated or acquired for a specific purpose be diverted to any other use without the consent of the donor or his duly authorized representatives.

[1] Section 458.308.